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No. \_\_\_\_\_

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In The  
**Supreme Court of the United States**

TONY E. SIMS, Rolette County Sheriff,  
in his individual and official capacity,

*Petitioner,*

v.

BRIGITTE WRIGHT,

*Respondent.*

**On Petition For Writ Of Certiorari  
To The United States Court Of Appeals  
For The Eighth Circuit**

**PETITION FOR WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED

The Eighth Circuit Court of Appeals affirmed the district court's determination refusing to grant qualified immunity to petitioner, Sheriff Tony Sims, on a hostile work environment claim under 42 U.S.C. § 1983 brought due to alleged sexual harassment that was verbal only. The decision concluded that verbal sexual harassment rose, in the absence of physical touching or sexual propositioning, to the level of a constitutional violation sufficient to support the claim against petitioner. In reaching this conclusion, the Eighth Circuit found that sexual harassment claims under section 1983 were to be analyzed by standards set by Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e. This holding of the Eighth Circuit directly conflicts with other holdings of the First, Second, and Tenth Circuits, as well as United States Supreme Court precedent.

Two questions are presented:

1. Are sexual harassment claims under 42 U.S.C. § 1983 analyzed under the same standards as Title VII 42 U.S.C. § 2000e?
2. Is it clearly established that verbal sexual harassment alone, without physical touching or sexual propositioning, rises to the level of a constitutional violation sufficient to establish liability under 42 U.S.C. § 1983?

## **PARTIES TO PROCEEDING**

Petitioner is Tony Sims, the Sheriff of Rolette County, a political subdivision in the State of North Dakota.

Respondent is Brigitte Wright, a former employee of the Rolette County Sheriff's Department.

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## OPINION BELOW

The decision of the Court of Appeals is reprinted in the appendix to this petition ("Pet. App.") at 1 and is reported at *Wright v. Rolette County*, 417 F.3d 879 (8th Cir. 2005). The decision of the District Court is not officially reported, but is reprinted at Pet. App. 23.

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## STATEMENT OF JURISDICTION

The judgment of the Court of Appeals was entered on August 8, 2005. Petitions by both parties for rehearing en banc were denied on September 14, 2005. Pet. App. 40. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

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## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

**Title 42 United States Code, Section 1983.**

**Civil action for deprivation of rights.**

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity,

injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

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### STATEMENT OF THE CASE

This petition seeks review of a decision of the United States Court of Appeals for the Eighth Circuit with respect to hostile work environment sexual harassment claims under 42 U.S.C. § 1983. The respondent claims that she was subjected to sexual harassment and abuse, in the form of comments, name calling, vulgarities, and innuendoes of a sexual nature by petitioner. The Court of Appeals held that, even in the absence of physical touching or a request for sexual favors, verbal sexual harassment alone states a valid claim under 42 U.S.C. § 1983. In doing so, the Eighth Circuit held that sexual harassment claims are to be analyzed under the same standards as sexual harassment claims brought under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e. However, the court's opinion conflicts with other decisions of that court and decisions by other circuit courts who have addressed the issue. This Court should therefore take this opportunity to resolve these issues, which are of considerable importance to employment law.

1. The respondent, Brigitte Wright, worked for the petitioner, Rolette County Sheriff Tony Sims, as an office deputy from September 2000 until she quit on October 25,

2002. The respondent claimed<sup>1</sup> that she was subjected to sexual harassment on a daily basis from the beginning of her employment at the Rolette County Sheriff's office. Pet. App. 2. The harassment included the use of vulgar and sexist language, derogatory name calling, references to a "potty cam" in regard to the restroom, and other unwelcome comments of a sexual nature. *Id.*

The respondent was unaware of the County's policy against sexual harassment until she attended Correctional Officer Basic training in December 2001. Pet. App. 3. As part of her training, the respondent learned that sexual harassment included unwanted comments that were sexual in nature. *Id.* In January of 2002, the respondent informed the Rolette County Commissioner, Eldon Moors, about her situation, but he informed her there was nothing he could do about it. *Id.* Two months later, in March of 2002, the respondent spoke with the Rolette County States Attorney, Mary O'Donnell regarding the harassment, who also did not do anything about the situation. *Id.*

On April 1, 2002, respondent, through her attorney, sent a letter to Rolette County complaining of the alleged sexual harassment and asserting that it created a hostile work environment. Pet. App. 4. The County hired an attorney to investigate the claims while the respondent was placed on paid leave. *Id.* The investigation concluded on June 27, 2002, with a finding that the sexual comments were not unwelcome even though they were inappropriate,

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<sup>1</sup> The facts of this case are presented in the light most favorable to the respondent in accordance with resolution of summary judgment motions.

and correspondently respondent's leave was terminated. *Id.* Respondent returned to work on July 29, 2002, but ultimately quit on October 25, 2002, alleging constructive discharge. *Id.*

2. The respondent filed this action in Federal District Court, District of North Dakota, on February 21, 2003, pursuant to 42 U.S.C. § 1983, against Rolette County, Rolette County Sheriff Tony Sims, and the Rolette County Commissioners, claiming sexual harassment in the form of a hostile work environment and constructive discharge. Pet. App. 4. The respondent also brought claims against Rolette County under Title VII and the North Dakota Human Rights Act, N.D.C.C. § 14-02.4.

3. The petitioner moved the District Court for summary judgment based upon three separate grounds: qualified immunity with respect to the § 1983 claims; failure to establish a prima facie case of constructive discharge under § 1983 based upon an alleged hostile work environment arising from verbal sexual harassment alone; and failure to provide petitioner and Rolette County with a meaningful opportunity to remedy the sexual harassment. Pet. App. 4. The District Court issued a Memorandum and Order denying petitioner's motion, but granted the motion for summary judgment for the remaining defendants. *Id.* The petitioner timely appealed the District Court decision to the Eighth Circuit Court of Appeals.

4. The Court of Appeals reversed in part, affirmed in part, and remanded the District Court's decision. The Court of Appeals reversed the District Court's denial of summary judgment on the respondent's constructive